

which the product is being shipped. For example, semiconductor manufacturing equipment would be of little use in a country without an electronics industry.

4. The customer has little or no business background.

5. The customer is willing to pay cash for a very expensive item when the terms of the sale call for financing.

6. The customer is unfamiliar with the product's performance characteristics but still wants the product.

7. Routine installation, training or maintenance services are declined by the customer.

8. Delivery dates are vague, or deliveries are planned for out-of-the-way destinations.

9. A freight forwarding firm is listed as the product's final destination.

10. The shipping route is abnormal for the product and destination.

11. Packaging is inconsistent with the stated method of shipment or destination.

12. When questioned, the buyer is evasive or unclear about whether the purchased product is for domestic use, export or reexport.

13. You receive an order for "parts" or "components" for an end item in 9x515 or the "600 series." The requested "parts" or "components" may be eligible for License Exception STA, another authorization, or may not require a destination-based license requirement for the country in question. However, the requested "parts" or "components" would be sufficient to service one hundred of the 9x515 or "600 series" end items, but you "know" the country does not have those types of end items or only has two of those end items.

14. The customer indicates or the facts pertaining to the proposed export suggest that a 9x515 or "600 series" item may be reexported to a destination listed in Country Group D:5 (see Supplement No. 1 to part 740 of the EAR).

[61 FR 12740, Mar. 25, 1996. Redesignated and amended at 62 FR 25453, 25456, May 9, 1997; 78 FR 22706, Apr. 16, 2013; 79 FR 27434, May 13, 2014]

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

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SUPPLEMENT NO. 2 TO PART 734—GUIDELINES FOR *De Minimis* RULES

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

§ 734.1 Introduction.

(a) In this part, references to the Export Administration Regulations (EAR) are references to 15 CFR chapter VII, subchapter C. This part describes the scope of the Export Administration Regulations (EAR) and explains certain key terms and principles used in the EAR. This part provides the rules you need to use to determine whether items and activities are subject to the EAR. This part is the first step in determining your obligations under the EAR. If neither your item nor your activity is subject to the EAR, then you do not have any obligations under the EAR and you do not need to review other parts of the EAR. If you already know that your item or activity is subject to the EAR, you do not need to review this part and you can go on to review other parts of the EAR to determine your obligations. This part also describes certain key terms and principles used in the EAR. Specifically, it includes the following terms: "subject to the EAR," "items subject to the EAR," "export," and "reexport." These and other terms are also included in part 772 of the EAR, Definitions of Terms, and you should consult part 772 of the EAR for the meaning of terms used in the EAR. Finally, this part makes clear that compliance with the EAR does not relieve any obligations imposed under foreign laws.

§ 734.2

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(b) This part does not address any of the provisions set forth in part 760 of the EAR, Restrictive Trade Practices or Boycotts.

(c) This part does not define the scope of legal authority to regulate exports, including reexports, or activities found in the Export Administration Act and other statutes. What this part does do is set forth the extent to which such legal authority has been exercised through the EAR.

[61 FR 12746, Mar. 25, 1996, as amended at 69 FR 5690, Feb. 6, 2004]

§ 734.2 Important EAR terms and principles.

(a) *Subject to the EAR—Definition.* (1) “Subject to the EAR” is a term used in the EAR to describe those items and activities over which BIS exercises regulatory jurisdiction under the EAR. Conversely, items and activities that are not subject to the EAR are outside the regulatory jurisdiction of the EAR and are not affected by these regulations. The items and activities subject to the EAR are described in §§ 734.2 through 734.5 of this part. You should review the Commerce Control List (CCL) and any applicable parts of the EAR to determine whether an item or activity is subject to the EAR. However, if you need help in determining whether an item or activity is subject to the EAR, see § 734.6 of this part. Publicly available technology and software not subject to the EAR are described in §§ 734.7 through 734.11 and supplement no. 1 to this part.

(2) Items and activities subject to the EAR may also be controlled under export-related programs administered by other agencies. Items and activities subject to the EAR are not necessarily exempted from the control programs of other agencies. Although BIS and other agencies that maintain controls for national security and foreign policy reasons try to minimize overlapping jurisdiction, you should be aware that in some instances you may have to comply with more than one regulatory program.

(3) The term “subject to the EAR” should not be confused with licensing or other requirements imposed in other parts of the EAR. Just because an item or activity is subject to the EAR does

not mean that a license or other requirement automatically applies. A license or other requirement applies only in those cases where other parts of the EAR impose a licensing or other requirement on such items or activities.

(b) *Export and reexport—(1) Definition of export.* “Export” means an actual shipment or transmission of items subject to the EAR out of the United States, or release of technology or software subject to the EAR to a foreign national in the United States, as described in paragraph (b)(2)(ii) of this section. See paragraph (b)(9) of this section for the definition that applies to exports of encryption source code and object code software subject to the EAR.

(2) *Export of technology or software.* (See paragraph (b)(9) for provisions that apply to encryption source code and object code software.) “Export” of technology or software, excluding encryption software subject to “ET” controls, includes:

(i) Any release of technology or software subject to the EAR in a foreign country; or

(ii) Any release of technology or source code subject to the EAR to a foreign national. Such release is deemed to be an export to the home country or countries of the foreign national. This deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Note that the release of any item to any party with knowledge a violation is about to occur is prohibited by § 736.2(b)(10) of the EAR.

(3) *Definition of “release” of technology or software.* Technology or software is “released” for export through:

(i) Visual inspection by foreign nationals of U.S.-origin equipment and facilities;

(ii) Oral exchanges of information in the United States or abroad; or

(iii) The application to situations abroad of personal knowledge or technical experience acquired in the United States.